Remarks

This Application has been carefully reviewed in light of the Office Action dated March 10, 2004. Applicant appreciates the Examiner's consideration of the Application. Because Applicant believes all claims are allowable over the rejections made by the Examiner, Applicant has not amended any of the claims. Applicant respectfully requests reconsideration and allowance of all pending claims.

I.   Claims 1-34 Comply with 35 U.S.C. § 112, Second Paragraph

The Examiner rejects Claims 1-34 under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully disagrees.

In particular, the Examiner states, "Regarding Claims 1, 11, 21 and 31-34, the phrase 'not substantially affecting' renders the claim indefinite because it is unclear how exactly the authorized use of data are not being affected." (Office Action, Page 2)

The essential inquiry pertaining to this requirement is whether the claims set out and circumscribe subject matter with a reasonable degree of clarity and particularity. Definiteness of claim language must be analyzed, not in a vacuum, but in light of: (a) the content of the particular application disclosure; (b) the teachings of the prior art; and (c) the claim interpretation that would be given by one possessing ordinary skill in the art at the time the invention was made. M.P.E.P. § 2173.02. Furthermore, the test for indefiniteness under Section 112, second paragraph, is whether "those skilled in the art would understand what is claimed when the claim is read in light of the specification." M.P.E.P. §2173.02 (citing *Orthokinetics, Inc. v. Safety Travel Chairs, Inc.*, 806 F.2d 1565, 1576 (Fed. Cir. 1986)).

First, Applicant respectfully submits that those of ordinary skill in the art would understand "the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer computers or users associated with the buyer computers," as recited in Claim 1 for example. Second, Applicant respectfully directs the Examiner's attention to at least Page 27, Line 11 through Page 28, Line 5 and

Page 29, Lines 21-31 of the Specification, which provide an example description of this limitation.

For at least these reasons, Applicant respectfully submits that Claims 1, 11, 21, and 31-34 comply with 35 U.S.C. § 112, second paragraph. Thus, Applicant respectfully requests reconsideration and allowance of Claims 1, 11, 21, and 31-34 and their respective dependent claims.

II.   Claims 1-5, 8, 11-15, 18, 21-25, 28, and 31 are allowable over the Proposed *Ogilvie-Walker* Combination

The Examiner rejects Claims 1-5, 8, 11-15, 18, 21-25, 28, and 31 under 35 U.S.C. § 103(a) as being unpatentable over Ogilvie, U.S. Patent 6,343,738 ("*Ogilvie*") in view of Walker, et al., U.S. Patent 6,249,772 ("*Walker*"). Applicant respectfully disagrees.

A.   The Proposed *Ogilvie-Walker* Combination Fails to Disclose, Teach, or Suggest Certain Limitations Recited in Applicant's Claims

Ogilvie discloses "sampling, escrowing, and other tools and techniques for facilitating transactions that involve digital goods." (Abstract) According to the system disclosed in *Ogilvie*, digital goods may be escrowed with an automatic broker, which may create and distribute samples of the digital goods. (Abstract) The samples of the digital goods are created using techniques such as distorting or burdening part or all of a copy of the goods. (Abstract)

In contrast, Applicant's Claim 1, for example, recites:

> A system for watermarking data associated with one or more products, the system comprising one or more software components collectively operable to:
> generate an algorithm for creating a particular pattern in data associated with one or more products available from one or more sellers, the data being stored in one or more databases accessible to one or more buyer computers for search queries for data associated with certain of the products, the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer computers or users associated with the buyer computers; and

apply the algorithm to the data to create the particular pattern in the
data.

Ogilvie, whether considered alone or in combination with *Walker*, fails to disclose, teach, or suggest various limitations recited in Claim 1.

For example, *Ogilvie* fails to disclose, teach, or suggest "generat[ing] an algorithm for creating a particular pattern in data associated with one or more products available from one or more sellers, the data being stored in one or more databases accessible to one or more buyer computers for search queries for data associated with certain of the products, the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer computers or users associated with the buyer computers," as recited in Claim 1. The Examiner equates the "one or more products" recited in Claim 1 with the "digital goods" disclosed in *Ogilvie*. (Office Action, Page 3) The Examiner also equates the "data" recited in Claim 1 with the "sample" disclosed in *Ogilvie*. Although Applicant does not necessarily agree that these equations can be made, for purposes of this argument, Applicant will assume (without concession) that these equations can be made. The Examiner further appears to equate the sampling techniques disclosed in *Ogilvie* with the "algorithm creating a particular pattern in data associated with one or more products available from one or more sellers . . . the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer computers or users associated with the buyer computers," as recited in Claim 1. (*See* Office Action, Page 3) Applicant respectfully submits that *Ogilvie* does not support this interpretation.

The sampling techniques performed by the system disclosed in *Ogilvie* are performed on the digital goods (which the Examiner equated with the one or more products recited in Claim 1) to create a sample of the digital goods. In contrast, the algorithm recited in Claim 1 is generated for creating a particular pattern *in data associated with one or more products* and is *applied to the data associated with the one or more products*. In *Ogilvie*, the sample that the Examiner equates with the data recited in Claim 1 does not even exist until after the sampling techniques are applied to the digital goods, which the Examiner equates with the

one or more products recited in Claim 1. Thus, Applicant respectfully submits that the equations forming the foundation of the Examiner's comparison between the *Ogilvie* and Claim 1 cannot be made. Applicant further respectfully submits that these distinctions alone are sufficient to patentably distinguish Claim 1 from *Ogilvie*.

Moreover, a purpose of the sampling techniques disclosed in *Ogilvie* is to "permit the buyer to inspect the goods without thereby making the goods available for use by the buyer without purchase." (Column 7, Lines 1-3) The data to which the sampling techniques is applied in the system disclosed in *Ogilvie* (the digital product) is to be distorted such that the buyer cannot use the digital goods unless the buyer purchases the digital goods associated with the sample. In contrast, the algorithm that is generated and applied in Claim 1 is "for creating a particular pattern in data associated with one or more products . . . the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer computers or users associated with the buyer computers." Thus, authorized use of the data to which the algorithm is applied in Claim 1 is not substantially affected by the pattern.

Walker fails to account for these deficiencies of *Ogilvie*.

As another example, for similar reasons to those discussed above, *Ogilvie* fails to disclose, teach, or suggest "apply[ing] the algorithm to the data to create the particular pattern in the data." Again, the sampling techniques discussed in *Ogilvie* are applied to the digital products to create the samples. The sampling techniques are not applied to the samples, which the Examiner equates with the data recited in Claim 1.

The Examiner acknowledges, and Applicant agrees, that *Ogilvie* fails to teach "the data being stored in one or more databases accessible to one or more buyer computers <u>for</u> <u>search queries for data associated with certain of the products.</u>" (Office Action, Page 3; emphasis in original) However, the Examiner asserts that *Walker* teaches "buyers' search queries among databases for data associated with certain of the products." (Office Action, Pages 3-4; citations omitted) Whether or not this is true, Applicant respectfully submits that

the Examiner has not shown the required teaching, suggestion, or motivation to combine *Ogilvie* with *Walker*, as discussed below.

B.   The Proposed *Ogilvie-Walker* Combination is Inadequate and Cannot Be Made

The rejection of Applicant's claims is also improper because the Examiner has not shown the required teaching, suggestion, or motivation in *Ogilvie*, *Walker*, or in the knowledge generally available to those of ordinary skill in the art at the time of the invention to combine or modify *Ogilvie* or *Walker* in the manner the Examiner proposes. The rejected claims are allowable for at least this reason.

Applicant respectfully submits that the Examiner's conclusory assertion that it would have been obvious to combine the teachings of *Ogilvie* with the teachings of *Walker* to arrive at Applicant's invention is entirely insufficient to support a *prima facie* case of obviousness under 35 U.S.C. § 103(a) under the M.P.E.P. and the governing Federal Circuit case law.

The question raised under 35 U.S.C. § 103 is whether the prior art taken as a whole would suggest the claimed invention taken as a whole to one of ordinary skill in the art at the time of the invention. Accordingly, even if all elements of a claim are disclosed in various prior art references, which is certainly not the case here as discussed above, the claimed invention taken as a whole cannot be said to be obvious without some reason given in the prior art why one of ordinary skill at the time of the invention would have been prompted to modify the teachings of a reference or combine the teachings of multiple references to arrive at the claimed invention. It is clear based at least on the many distinctions discussed above that the proposed *Ogilvie-Walker* combination does not, taken as a whole, suggest the claimed invention, taken as a whole. Applicant respectfully submits that the Examiner has merely pieced together disjointed portions of unrelated references to reconstruct Applicant's claims.

The M.P.E.P. sets forth the strict legal standard for establishing a *prima facie* case of obviousness based on modification or combination of prior art references. "To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some

suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references where combined) must teach or suggest all the claim limitations." M.P.E.P. § 2142, 2143. The teaching, suggestion, or motivation for the modification or combination and the reasonable expectation of success must both be found in the prior art and cannot be based on an applicant's disclosure. *See Id.* (citations omitted). "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art" at the time of the invention. M.P.E.P. § 2143.01. Even the fact that references *can* be modified or combined does not render the resultant modification or combination obvious unless the prior art teaches or suggests the desirability of the modification or combination. *See Id.* (citations omitted). Moreover, "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. All words in a claim must be considered in judging the patentability of that claim against the prior art." M.P.E.P. § 2143.03 (citations omitted).

The governing Federal Circuit case law makes this strict legal standard even more clear.[1] According to the Federal Circuit, "a showing of a suggestion, teaching, or motivation to combine or modify prior art references is an essential component of an obviousness holding." *In re Sang-Su Lee*, 277 F.3d 1338, 1343, 61 U.S.P.Q.2d 1430, 1433 (Fed. Cir. 2002) (quoting *Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 U.S.P.Q.2d 1456, 1459 (Fed. Cir. 2000)). "Evidence of a suggestion, teaching, or motivation . . . may flow from the prior art references themselves, the knowledge of one of ordinary skill in the art, or, in some cases, the nature of the problem to be solved." *In re Dembiczak*, 175 F.3d 994, 999, 50 U.S.P.Q.2d 1614, 1617 (Fed. Cir. 1999). However, the "range of sources available . . . does not diminish the requirement for actual evidence." *Id.* Although a prior art device "may be capable of being modified to run the way the apparatus is claimed, there must be a suggestion or motivation in the reference to do so." *In re Mills*, 916

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[1] Note M.P.E.P. 2145 X.C. ("The Federal Circuit has produced a number of decisions overturning obviousness rejections due to a lack of suggestion in the prior art of the desirability of combining references.").

F.2d at 682, 16 U.S.P.Q.2d at 1432. *See also In re Rouffet,* 149 F.3d 1350, 1357, 47 U.S.P.Q.2d 1453, 1457-58 (Fed. Cir. 1998) (holding a *prima facie* case of obviousness not made where the combination of the references taught every element of the claimed invention but did not provide a motivation to combine); *In Re Jones,* 958 F.2d 347, 351, 21 U.S.P.Q.2d 1941, 1944 (Fed. Cir. 1992) ("Conspicuously missing from this record is any evidence, other than the PTO's speculation (if that can be called evidence) that one of ordinary skill in the herbicidal art would have been motivated to make the modification of the prior art salts necessary to arrive at" the claimed invention.). Even a determination that it would have been obvious to one of ordinary skill in the art at the time of the invention to try the proposed modification or combination is not sufficient to establish a *prima facie* case of obviousness. *See In re Fine,* 837 F.2d 1071, 1075, 5 U.S.P.Q.2d 1596, 1599 (Fed. Cir. 1988).

In addition, the M.P.E.P. and the Federal Circuit repeatedly warn against using an applicant's disclosure as a blueprint to reconstruct the claimed invention. For example, the M.P.E.P. states, "The tendency to resort to 'hindsight' based upon applicant's disclosure is often difficult to avoid due to the very nature of the examination process. However, impermissible hindsight must be avoided and the legal conclusion must be reached on the basis of the facts gleaned from the prior art." M.P.E.P. § 2142. The governing Federal Circuit cases are equally clear. "A critical step in analyzing the patentability of claims pursuant to [35 U.S.C. § 103] is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field. . . . Close adherence to this methodology is especially important in cases where the very ease with which the invention can be understood may prompt one 'to fall victim to the insidious effect of a hindsight syndrome wherein that which only the invention taught is used against its teacher.'" *In re Kotzab,* 217 F.3d 1365, 1369, 55 U.S.P.Q.2d 1313, 1316 (Fed. Cir. 2000) (citations omitted). In *In re Kotzab,* the court noted that to prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to show a motivation to combine the references that create the case of obviousness. *See id. See also, e.g., Grain Processing Corp. v. American Maize-Products,* 840 F.2d 902, 907, 5 U.S.P.Q.2d 1788, 1792 (Fed. Cir. 1988). Similarly, in *In re Dembiczak,* the Federal Circuit reversed a finding of obviousness by the

Board, explaining that the required evidence of such a teaching, suggestion, or motivation is essential to avoid impermissible hindsight reconstruction of an applicant's invention:

> Our case law makes clear that the best defense against the subtle but powerful attraction of hind-sight obviousness analysis is *rigorous application of the requirement for a showing of the teaching or motivation to combine prior art references.* Combining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability—the essence of hindsight.

175 F.3d at 999, 50 U.S.P.Q.2d at 1617 (emphasis added) (citations omitted).

With regard to the proposed *Ogilvie-Walker* combination, the Examiner indicates that "[i]t would have been obvious to one of ordinary skill in the art at the time the invention was made to allow the data stored in one or more databases in Ogilvie's teaching to be searched as taught by Walker because this would allow buyers to quickly and easily search desired information." (Office Action, Page 4). First, the data stored in a database in the system disclosed in *Ogilvie* that is available to the buyers appear to be the samples of the digital goods. (*See* Figure 11) There is nothing in *Ogilvie* that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to include a searching capability of the samples. In *Walker*, the buyer is able to specify a geographic location, product choices, product feature sets, price ranges, etc. The search engine scans appropriate database tables to produce and provide lists of retailers in a particular geographic location (e.g., the specified location of the user computer) normally stocking products having particular traits selected by the user and which are sold at identified prices as set and established by a manufacturer. (*See* Column 9, Line 64 through Column 10, Line 5) There is nothing in *Walker* that would teach, suggest, or motivate one of ordinary skill in the art at the time of invention to include generation and application of the sampling techniques disclosed in *Ogilvie*.

The Examiner has merely proposed an alleged advantage (and one which Applicants do not admit could even be achieved by combining these references in the manner the Examiner proposes) of combining *Ogivlie* with *Walker*. The Examiner has not pointed to any portions of either *Ogilvie* or *Walker* that would teach, suggest, or motivate one of ordinary

skill in the art at the time of invention to incorporate the automatic broker tools and techniques disclosed in *Ogilvie* with the systems and methods disclosed in *Walker*. It certainly would not have been obvious to one of ordinary skill in the art at the time of the invention, based solely on the prior art, *to even attempt* to incorporate into the automatic broker tools and techniques disclosed in *Ogilvie* such systems and methods as disclosed in *Walker*. Even more clearly, it certainly would not have been obvious to one of ordinary skill in the art at the time of the invention, based solely on the prior art, *to actually* incorporate into the automatic broker tools and techniques disclosed in *Ogilvie* such a systems and methods as disclosed in *Walker*, which would be required to establish a *prima facie* case of obviousness under the M.P.E.P. and the governing Federal Circuit case law.

Accordingly, since the prior art fails to provide the required teaching, suggestion, or motivation to combine *Ogilvie* with *Walker* in the manner the Examiner proposes, Applicant respectfully submits that the Examiner's conclusions set forth in the Office Action fall well short of the requirements set forth in the M.P.E.P. and the governing Federal Circuit case law for demonstrating a *prima facie* case of obviousness. Thus, Applicant respectfully submits that the Examiner's proposed combination of *Ogilvie* with *Walker* appears to be merely an attempt, with the benefit of hindsight, to reconstruct Applicant's claims and is unsupported by the teachings of *Ogilvie* and *Walker*. Applicant respectfully submits that the rejection must therefore be withdrawn.

Second, as demonstrated above, Applicant respectfully submits that *Ogilvie* is wholly inadequate as a reference against independent Claim 1. Thus, even if *Walker* discloses the portions of Claim 1 that the Examiner suggests (with which Applicant does not agree), and even assuming for the sake of argument that there was the required teaching, suggestion, or motivation to combine *Ogilvie* with *Walker* as the Examiner proposes, the proposed *Ogilvie-Walker* combination would still fail to disclose, teach, or suggest the limitations specifically recited in independent Claim 1, as is required under the M.P.E.P. and the governing Federal Circuit cases for a *prima facie* case of obviousness.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 1 and its dependent claims. For at least the reasons stated

with regard to independent Claim 1, Applicant respectfully requests reconsideration and allowance of independent Claims 11, 21, and 31, together with all of their respective dependent claims.

Claims 4-5 and 8 (which depend from Claim 1), Claims 12-15 and 18 (which depend from Claim 11), and Claims 22-25 and 28 (which depend from Claim 21), depend from independent Claims 1, 11, and 21, which Applicant has shown above to be clearly allowable, and are allowable for at least this reason. In addition, Claims 4-5, 8, 12-15, 18, 22-25, and 28 recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1, 11, and 21, as described above, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. For at least these reasons, Applicants respectfully request reconsideration and allowance of Claims 4-5, 8, 12-15, 18, 22-25, and 28.

III.   Claims 6-7, 16-17, 26-27, and 32-34 are Allowable over the Proposed *Ogilvie-Walker-Kuo* Combination

The Examiner rejects Claims 6-7, 16-17, 26-27, and 32-34 under 35 U.S.C. § 103(a) as being unpatentable over *Ogilvie* in view of *Walker*, and further in view of Kuo, et al., U.S. Patent 6,230,288 ("*Kuo*").

With respect to the rejection of dependent Claims 6-7, 16-17, and 26-27, these claims depend from independent Claims 1, 11, and 21, respectively, which Applicant has shown above to be clearly allowable over the proposed *Ogilvie-Walker* combination. Applicant respectfully submits that *Kuo* fails to make up for any of the deficiencies of *Ogilvie* and *Walker* discussed above. Thus, Claims 6-7, 16-17, and 26-27 are allowable at least because of their dependence on Claims 1, 11, and 21, respectively. In addition, Claims 6-7, 16-17, and 26-27 recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1, 11, and 21, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Furthermore, Applicant does not admit that the proposed combination of

Ogilvie, *Walker*, and *Kuo* is possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references. For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 6-7, 16-17, and 26-27.

Independent Claim 32 recites:

A system for watermarking data associated with one or more products, the system comprising one or more software components collectively operable to:

generate an algorithm for creating a particular pattern in data associated with one or more products available from one or more sellers, the data comprising one or more product attribute values, seller attribute values, and product descriptions for each of the one or more products, the data being stored in one or more databases accessible to one or more buyer computers for search queries for data associated with certain of the products, the pattern comprising a plurality of non-printable American Standard Code for Information Interchange (ASCII) characters inserted throughout the data according to a pre-defined arrangement, the pattern facilitating identification of a copy of the data and not substantially affecting authorized use of the data by the one or more buyer or users associated with the buyer computers; and

apply the algorithm to the data to create the particular pattern in the data.

The proposed *Ogilvie-Walker-Kuo* combination fails to disclose, teach, or suggest various limitations recited in Claim 32.

First, Applicant respectfully submits that *Ogilvie* is inadequate as a primary reference against Claim 32 for substantially similar reasons to those discussed above with reference to independent Claim 1. Both *Walker* and *Kuo* fail to make up for these deficiencies of *Ogilvie*. Additionally, Applicant respectfully reiterates that the Examiner has not shown the required teaching, suggestion, or motivation in either *Ogilvie* or *Walker* to combine or modify these references in the manner the Examiner proposes.

Second, the Examiner acknowledges, and Applicant agrees, that both *Ogilvie* and *Walker* fail to teach "the ASCII characters are non-printable." (Office Action, Page 6; emphasis in original) However, the Examiner argues that *Kuo* teaches inserting non-printable ASCII characters into a file. (Office Action, Page 6) *Kuo* is directed to a method for treating

whitespace during virus detection and has nothing to do with automatic broker tools and techniques (*Ogilvie*) or systems and methods wherein a buyer purchases a product at a first price and acquires the product from a merchant that offers the product for sale at a second price (*Walker*). Thus, Applicant respectfully submits that there is no teaching, suggestion, or motivation in the cited references to combine or modify these references in the manner suggested by the Examiner.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of independent Claim 32. For at least the reasons stated with regard to independent Claim 32, Applicant respectfully requests reconsideration and allowance of independent Claims 33-34.

IV.   Dependent Claims 9-10, 19-20, and 29-30 are Allowable

The Examiner also rejects Claims 9, 19, and 29 under 35 U.S.C. § 103(a) as being unpatentable over *Ogilvie* in view of *Walker*, and further in view of Berkland, et al., U.S. Patent 4,648,047 ("*Berkland*"). The Examiner also rejects Claims 10, 20, and 30, under 35 U.S.C. § 103(a) as being unpatentable over *Ogilvie* in view of *Walker*, and further in view of Astola, et al., U.S. Patent 6,094,722 ("*Astola*").

Claims 9-10, 19-20, and 29-30 depend from independent Claims 1, 11, and 21, respectively, which Applicant has shown above to be clearly allowable over the proposed *Ogilvie-Walker* combination. Applicant respectfully submits that both *Berkland* and *Astola* fail to make up for any of the deficiencies of *Ogilvie* and *Walker* discussed above. Thus, Claims 9-10, 19-20, and 29-30 are allowable at least because of their dependence on Claims 1, 11, and 21, respectively. In addition, Claims 9-10, 19-20, and 29-30 recite further patentable distinctions over the prior art of record. To avoid burdening the record and in view of the clear allowability of Claims 1, 11, and 21, Applicant does not specifically discuss these distinctions in this Response. However, Applicant reserves the right to discuss these distinctions in a future Response or on Appeal, if appropriate. Furthermore, Applicant does not admit that the proposed combination of *Ogilvie*, *Walker*, and *Berkland* and the proposed combination of *Ogilvie*, *Walker*, and *Astola* are possible or that the Examiner has demonstrated the required teaching, suggestion, or motivation to combine these references.

For at least these reasons, Applicant respectfully requests reconsideration and allowance of Claims 9-10, 19-20, and 29-30.

V.   No Waiver

All of Applicant's arguments and amendments are without prejudice or disclaimer. Additionally, Applicant has merely discussed example distinctions from the *Ogilvie*, *Walker*, *Kuo*, *Berkland*, and *Astola* references. Other distinctions may exist, and Applicant reserves the right to discuss these additional distinctions in a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicant does not acquiesce to the Examiner's additional statements. The example distinctions discussed by Applicant are sufficient to overcome the obviousness rejections.

Conclusion

Applicant has made an earnest attempt to place this case in condition for allowance. For the foregoing reasons, and for other reasons clearly apparent, Applicant respectfully requests full allowance of all pending claims.

If the Examiner believes a telephone conference would advance prosecution of this case in any way, the Examiner is invited to contact Christopher W. Kennerly, Attorney for Applicant, at the Examiner's convenience at (214) 953-6812.

Applicants submit a check in the amount of $110.00 to cover the cost of a one-month extension of time. Applicants believe no other fees are due. If this is not correct, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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